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10/055,658	01/23/2002	Klaus-Dieter Nehren	Heraeus 385-WCG	7899

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EXAMINER

KAUFMAN, JOSEPH A

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 01/29/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 20

Application Number: 10/055,658  
Filing Date: January 23, 2002  
Appellant(s): NEHREN ET AL.

William C. Gerstenzang  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**  
**JAN 29 2004**  
**GROUP 3700**

This is in response to the appeal brief filed December 22, 2003.

Art Unit: 3754

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 1-6 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

Art Unit: 3754

**(9) Prior Art of Record**

5,429,273

King et al.

7-1995

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6 stand rejected under 35 U.S.C. 102(b) as being anticipated by King et al. '273. This rejection is set forth in prior Office Action, Paper No. 12.

**(11) Response to Argument**

The sole point of contention is whether or not King et al. shows a "helical cutting blade" as required by all of the claims. Appellants do not consider the corkscrew portion of King et al. to meet the definition of a "helical cutting blade".

When looking to define the metes and bounds of a limitation, one of ordinary skill in the art must consider the ordinary meaning of the terms unless the appellants are acting as their own lexicographer. When reviewing the specification, the examiner does not find sufficient evidence that appellants require the terms to be more specific than their ordinary meanings.

Looking at the ordinary meaning of the terms, *Webster New World Dictionary, Third College Edition* defines "helical" as "spiral" and a "blade" as "the cutting part of a tool, instrument, or weapon". Given these ordinary definitions, King et al. clearly shows cutter 42 to be a "the spiral cutting part of a tool" i.e. a helical cutting blade. When looking at especially Figures 4, 6 and 7, the end portion of 42 that cuts open the bag engages the bag along the spiral after the tip punctures the bag to further open the hole.

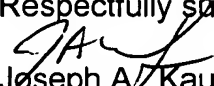
Art Unit: 3754

Appellants state in support of their position that their device has "helical knife edges which provide an S-formed cut in the bag (page 3, line 12)" and that the one step action is "surprising and unexpected". The "helical knife edge" and "S-formed cut" are not terms used in the claims, nor is any reference made to a one step action.

Appellants clearly had opportunity to add these limitations to the claims but chose not to do so.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Joseph A. Kaufman  
Primary Examiner  
Art Unit 3754

1/28/04

jak  
January 28, 2004

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